IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 61 OF 2007

Sertorio S. Facho
House No. C-1/132,
Near Head Post Office,
Panjim. .... Appellant

V/s

1. Dr. Fernando Jorge Colaso
Advocate and Notary
104, Manguirish Chambers,
1st floor, 18th June Road,
Panjim.

2. Mr. Tarzan De Costa (Advocate)
303, 3rd floor, Gaspar Apartments,
Western Side, Near People's High School,
Panjim. .... Respondents

Appellant in person.

CORAM : N.A. BRITTO, J.

DATE : 22nd OCTOBER, 2007

ORAL ORDER :

Heard the appellant in person.

2. This appeal is filed against the order dated 11/07/2007 of the learned trial Court in Civil Suit No. 5/2006.

3. The said Civil Suit was filed by the appellant/plaintiff against several

defendants and by order dated 6/06/2006 the plaintiff was directed to furnish copies of plaint to the defendants and on 11/07/2006 time to produce copies of documents was extended and again on 25/07/2006. The said order dated 6/06/2006 subsequently came to be challenged by the plaintiff in Writ Petition No. 270/2006 and by order dated 4/10/2006 this Court was pleased to grant ad interim relief of stay of the said order dated 6/06/2006.

4. The plaintiff's suit thereafter came to be dismissed by order dated 21/08/2006 as the plaintiff was absent and an application for restoration of the said suit is pending before the trial Court, but in the light of order dated 4/10/2006 of this Court the suit has been adjourned sine die. The plaintiff is at liberty to move this Court in Writ Petition No. 270/2006 in case the stay granted by this Court by order dated 4/10/2006 was only as regards order dated 6/06/2006 of the trial Court and therefore there was no justification for the trial Court to have adjourned the proceedings of the Civil Suit sine die.

5. As stated by the plaintiff, he filed an application before the trial Court dated 17/04/2007 with a view to take action against defendants no. 1 and 2 in the said Civil Suit namely Dr. Fernando Jorge Colaso and Mr. Tarzan De Costa under Sections 192,196 IPC in terms of Section 340 of the Code of Criminal Procedure, 1973.

6. The plaintiff's suit came to be dismissed on 21/08/2006 because it was represented to the Court by defendant no. 2 in the said Civil Suit that the plaintiff had not furnished copies of documents inspite of having given further time on 11/07/2006. The plaintiff's application dated 17/04/2007 came to be rejected, interalia, observing that it was poorly drafted and contained statements which were vague and conveyed no sense and the prayer too was meaningless. The learned trial Court also stated that there was no evidence, even prima facie of any fabrication or of any corrupt practices, mischief or any improper conduct on the part of the defendants/their advocates and therefore the allegations were meaningless and baseless.

7. The appellant/plaintiff submits that the said defendants knew from the previous suit that they had no right to get copies of the documents and relied on the decision of this Court reported in ***2006 (2) AIR Bom. R 330 (Mr. Aldas Valezia Tereza Mergulhao and Anr. V/s. Joaquim Jeronimo de Almeida & Ors.)***. The appellant states that in case the plaintiff had not given copies of the documents, the plaint had to be rejected.

8. Section 340 of the Code of Criminal Procedure, 1973 provides that when the Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-

section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceedings in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, -

(a) record a finding to that effect;
(b) make a complaint thereof in writing;
(c) send it to a Magistrate of the first class having jurisdiction;
(d) take sufficient security for the appearance for the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do send the accused in custody to such Magistrate; and
(e) bind over any person to appear and give evidence before such Magistrate.

9. In my view the trial Court after considering the said application has rightly come to the conclusion that no case was made out to take any action in terms of Section 340 of the Code and the said order could not be faulted. If the suit was wrongly dismissed, the same will be considered by the trial Court, at the time of considering the restoration application.

10. Hence, the appeal is dismissed in limine.

N.A. BRITTO, J.

NH/-